

1 witness, but that this is a full hearing and there are other
2 people and if this is going to be a national newsworthy event
3 the news organizations ought to be able to cover all parts of
4 it.

5 JUDGE CHACHKIN: What I'm, what I'm saying if, if,
6 if CNN only covers portions of Mr. Crouch's testimony,
7 apparently that would not be acceptable to you -- be allowed
8 to cover the same portions that CNN seeks to cover, or would
9 it be acceptable.

10 MR. TOPEL: That -- no, it our --

11 JUDGE CHACHKIN: Would not be acceptable?

12 MR. TOPEL: -- it would, it would not. We would, we
13 would want the right to make news of Mrs. Duff's testimony or
14 Pastor Hill's testimony if, if it's news.

15 MR. COHEN: Your Honor, has Mr., Mr. Topel
16 represented to you that his client will broadcast this --
17 these hearings? I haven't heard that, or if I heard it I
18 didn't hear it clearly.

19 JUDGE CHACHKIN: Is that the intention -- these
20 hearings live?

21 MR. TOPEL: I, I can't speak specifically. I think
22 we would like to have it for the opportunity to broadcast it
23 if in the licensee's discretion they feel it should be
24 broadcast. It hasn't happened yet. CNN may tape it and
25 decide they don't want to broadcast any of it. So, I'm not

1 prepared today to indicate that anything that was taped would
2 be broadcast. None of it may be, all of it may be.

3 JUDGE CHACHKIN: Yes, Mr. Honig?

4 MR. HONIG: It would be useful to know, Your Honor,
5 whether TBN has ever had experience in the past in covering a
6 trial and what has been their procedure.

7 MR. TOPEL: You can ask Mr. Honig. I can't answer
8 it because as you know, we're special counsel to TBN for this
9 hearing and so I would have to go off the record and find out.
10 I, I just couldn't answer that today.

11 JUDGE CHACHKIN: Well, I'll just take it under
12 advisement. Let's, let's proceed. Yes?

13 MR. SCHONMAN: Your Honor?

14 JUDGE CHACHKIN: Yes?

15 MR. SCHONMAN: Before we go on, I, I just want some
16 clarification if you will on your earlier ruling before our
17 recess. Paragraph 19 you said you were, you were striking and
18 as I recall you said you were striking it for the purposes of
19 the control issue.

20 JUDGE CHACHKIN: I said it wasn't relevant to the
21 control issue.

22 MR. SCHONMAN: Is it, is it, is it irrelevant and
23 being stricken for all purposes, it cannot be used at all, or
24 it, or it can be used for other --

25 JUDGE CHACHKIN: No, it's not relevant for any

1 purpose. This doesn't deal with state of mind and -- I'm
2 rejecting the entire paragraph.

3 MR. SCHONMAN: Thank you.

4 JUDGE CHACHKIN: Any other objections?

5 MR. COHEN: Paragraph 20, Your Honor. I --

6 JUDGE CHACHKIN: What is, what is the purpose of
7 this background material concerning Ms. Duff?

8 MR. TOPEL: Yes --

9 MR. COHEN: That was my question, Your Honor.

10 MR. TOPEL: -- twofold. It's background. It also
11 is a predicate for her testimony about some of the decisions
12 she made or NMTV and whether or not TBN controls her. She
13 talks how she learned how the -- or how religious programming
14 is important to the minority community, how that caused her to
15 believe that religious programming was not something that's
16 separate and distinct from minority programming, that that's
17 why she in her individual judgment believes that NMTV should
18 be a program affiliate of TBN. She talks about some of her
19 personal financial experiences to illustrate that the fact
20 that she's an employee of TBN doesn't put her under TBN's
21 financial control. So, it's related to the substance of the
22 issues, it's, it's tied up in subsequent paragraphs.

23 JUDGE CHACHKIN: As far as I can see, it doesn't
24 become relevant until it talks about Dr. Crouch -- the
25 position as public affairs director. I don't see how anything

1 before that has anything to do with control. The fact that
2 she was educated, the fact that she's married, the fact that
3 she was involved in churches, what does this have to do with
4 the question of who controlled NMTV?

5 MR. TOPEL: Well, it has to do with whether TBN
6 controlled her with respect to her programming decisions. For
7 example, she describes an experience where she saw a minister
8 who played a very positive role in, in quelling a race riot
9 and building racial harmony and that caused her to relate
10 that, that religious programming was a valuable program for
11 the minority community which leads to the decisions that she
12 as a director approved for NMTV to be a program affiliate of
13 TBN.

14 JUDGE CHACHKIN: What program, what program has she
15 put on that, that somehow relates to this past history?
16 That's not revealed here.

17 MR. TOPEL: Well, yes, Your Honor, in this case
18 there's a paragraph where she says, "That's why we are an
19 affiliate of the Trinity Broadcasting Network, because Trinity
20 Broadcasting broadcasts programs that help the poor and the
21 downtrodden," and there is testimony in her background about
22 her work at churches and community outreach and how she went
23 into people's homes and, and, and met the community needs
24 through a church ministry that was broadcast over the air.
25 And that relates to the decisions that, that she made as a

1 director of NMTV and why NMTV is a minority company even
2 though it happens to be Trinity Broadcasting programming,
3 minorities are allowed to do that, and, and this is her reason
4 why she made that decision.

5 MR. COHEN: Your Honor, I --

6 JUDGE CHACHKIN: Yes?

7 MR. COHEN: I believe this background -- extended
8 background has no relevance to the designated issues.
9 Notwithstanding what Mr. Topel has, has, has stated, it is not
10 -- this material is not tied up sufficiently, it's too
11 collateral to the designated issues. Mr. Topel has a theory
12 of relevance which is encyclopedic. That is, because intent
13 is involved, anything that happens is relevant if you -- if he
14 can in any way obliquely relate it to intent, and that's not
15 the test of relevance. In order for evidence to be admitted,
16 it has to be relevant and material. That doesn't mean that
17 conceivably it can touch upon or bear upon or have some, some
18 tangential relationship to it. It has to be directly involved
19 in it for evidence to be relevant. And yesterday you read the
20 definition of relevance from the Federal Rules which I believe
21 is consistent with what I said. But this is the kitchen, the
22 kitchen sink theory. I cannot conceive how because her
23 husband failed the exam for admission to the California
24 Pharmacy Board and that the sale of the -- Pharmacy fell
25 through and Ralph failed the, failed the state board exam, how

1 that -- information like that is reasonably or directly tied
2 in to the two issues in this proceeding. It simply won't,
3 won't work. And this theory of relevance I respectfully urge
4 is, is -- you should reject because you're going to her it all
5 through the testimony.

6 MR. SCHONMAN: Your Honor?

7 JUDGE CHACHKIN: Yes?

8 MR. SCHONMAN: I, I have a question before the
9 Bureau offers its comments. What paragraphs are we talking
10 about right now?

11 MR. COHEN: We begin on paragraph 20 and go
12 through --

13 JUDGE CHACHKIN: I guess paragraph --

14 MR. COHEN: Up, up, up through 28. 29 begins to
15 become relevant because then TBN becomes involved and she
16 began to watch it and then she began to be a volunteer and
17 then she accepted employment. And I have no objection to
18 paragraph 29, and then I have very few objections to the
19 remaining paragraphs that deal with her employment at NMTV.

20 MR. SCHONMAN: And how I'd like to offer my comments
21 since I know which paragraphs we're talking about. As a
22 general matter, the Bureau has no objection to this background
23 information coming in. It's -- it is merely background, it
24 tells who Mrs. Duff is, where she's from, some of her
25 experiences. I think her education -- her level of education

1 is important, is a relevant matter, I think her, her working
2 experience before she joined TBN is, is relevant information.
3 So, as a general matter, the Bureau has no objection to the
4 background information coming in. I do have a specific
5 objection on page 19, paragraph 24, just about in the middle,
6 just slightly above the center of the page there's, there's a
7 sentence that begins, "I raise this matter for a specific
8 reason in light of the suggestion." And I think we covered a
9 matter similar to this earlier, earlier today where there was
10 discussion about suggestions that the HDO was making or not
11 making and I think this falls into the same category of, of
12 testimony which should not be permitted. The, the HDO is
13 clear, the issues are there, we know what the issues are and
14 all we're looking for are the facts. So, getting, getting
15 back to the subject of my objection, I think the background
16 information can come in as, as mere background information so
17 that we know who Mrs. Duff is, but to the extent that she
18 attempts to, to argue suggestions that the HDO was making, I
19 would object to that portion. And in that respect, I, I would
20 -- my objection goes to the sentence, "I raise this matter,"
21 all the way to the end of that paragraph, to the end of
22 paragraph 24. Other than that, I would say the information
23 should come in.

24 MR. TOPEL: Your Honor, I'm, I'm going to go with
25 Mr. Shook -- with Mr. Schonman, with, with one, with one

1 exception. I think the, the sentence that begins, "The
2 apparent suggestion of the HDO through that suggestion is
3 completely untrue," falls within the parameters of your, your
4 prior ruling and our position is on the record. The
5 concluding sentence where Mrs. Duff explains why her
6 employment at TBN does not in her mind place her under TBN's
7 control I think is relevant to the issue and should stay in.

8 MR. COHEN: Your Honor, you, you ruled earlier in,
9 in connection with the, the diversification exhibit of TBN --
10 my notes reflect that you ruled this morning that background
11 could come in but it had no relevance. I have no objection if
12 this is coming in as background if you rule it has no
13 relevance. But it was not my understanding from Mr. Topel
14 that he wished this to come in for background only and not for
15 relevance.

16 JUDGE CHACHKIN: Mr. Topel?

17 MR. TOPEL: Mr. Cohen states my position correctly.
18 It was offered for both background and for relevance to the
19 extent that Mrs. Duff has testified that her background
20 influenced aspects that we feel are relevant to the case, her
21 decisions whether she's controlled by TBN. So, I, I believe
22 it's relevant for both purposes.

23 MR. COHEN: And in my view that's --

24 JUDGE CHACHKIN: You mean the fact that she was born
25 in 1934 in Omaha, Nebraska is relevant to control?

1 MR. TOPEL: Well, that's, that's background. No, of
2 course not.

3 JUDGE CHACHKIN: Well, well, I can go through each
4 one of these -- when does background stop and when does the
5 substantive basis begin?

6 MR. TOPEL: The, the substantive basis would be
7 picked up when later paragraphs talk about specific
8 experiences. For example, Mrs. Duff testifies that she joined
9 Trinity Broadcasting Network to be a telephone counselor to
10 help people in -- with needs who were, who were calling in.
11 And she said, "This was similar to what I had done earlier,
12 my first exposure to television ministry with Mr. Bernard,
13 Minister Jerry Bernard." The, the testimony -- the background
14 testimony about Jerry Bernard relates to how she came to work
15 at TBN because it was through his 20-year experience with her
16 that Dr. Crouch -- that she was recommended to Dr. Crouch.
17 So, most of it, most of it is background. I don't want to,
18 you know, belabor that this is, is the heart of the relevance
19 of our case, but, but these are -- this is factual testimony
20 and it should stand for what it stands for. In some cases, it
21 does relate to decisions she made for NMTV.

22 MR. COHEN: Then I think you should go through it
23 line-by-line, paragraph-by-paragraph, Your Honor, and rule
24 where it's background and where it comes in as to relevance.

25 JUDGE CHACHKIN: All right. Let's, let's start from

1 the beginning. It's paragraph 20 for background and
2 relevance. Well, you can tell me. Where, where do --

3 MR. TOPEL: Right.

4 JUDGE CHACHKIN: -- relevance begin?

5 MR. TOPEL: Okay. 20 is background, 21 relates to
6 both because the -- his work at the pharmacy is -- while they
7 had children is picked up in a later paragraph.

8 MR. COHEN: You want to hear objection on a
9 paragraph basis?

10 JUDGE CHACHKIN: No. I'm, I'm going to reject all
11 this material up to the point where she starts discussing her
12 involvement with TBN. As far as I'm concerned, the rest of it
13 is not relevant.

14 MR. TOPEL: Would you receive it as background, Your
15 Honor?

16 JUDGE CHACHKIN: No, I'm not going to receive it for
17 any purpose. This is not a comparative issue where, where
18 we're concerned about the, the background of individuals.
19 This is a control issue and only -- we don't need background
20 in here. If it's not relevant to the question of control it's
21 irrelevant as far as I'm concerned. Yes?

22 MR. SCHONMAN: Your Honor, I, I would urge you to,
23 to leave in those portions which, which address briefly her
24 educational background and her level of experience in the
25 broadcasting industry.

1 JUDGE CHACHKIN: -- anything dealing with the level
2 of experience in the broadcasting --

3 MR. TOPEL: And, Your Honor, I certainly object to a
4 selective presentation of Mrs. Duff's background. One person
5 may think certain things have certain values and, and other
6 people are entitled to argue other aspects of, of values and,
7 and --

8 JUDGE CHACHKIN: Well, the question is that if you
9 don't want it in that's fine, but I could understand that
10 argument saying her broadcast experience may have a bearing on
11 the decisions she made. I don't understand an argument in
12 saying where she was born or the college she went to or her
13 experiences raising children has a bearing on what she did at
14 TBN. One could be somewhat directly related, her prior
15 broadcast experience, or maybe her work experience, but
16 certainly the other matters, I don't see how that has any
17 bearing on her decisions made at TBN.

18 MR. TOPEL: But her, her -- part of her background
19 is her work in the minority community with churches and her
20 recognition that religious programming similar to TBN's
21 programming serves the minority communities in a very
22 important way. And she then testifies that -- in a later
23 paragraph, "That is why I -- it is -- it was my judgment that
24 NMTV was and still is and should be a TBN programming
25 affiliate. It wasn't because Paul Crouch twisted my arm and

1 told me we had to, it was my choice under my rights and, and
2 discretion and judgment that this is what we should do and
3 this is the reason -- part of the reason why."

4 JUDGE CHACHKIN: Well, that starts in paragraph 28.
5 The rest of it has nothing to do with it.

6 MR. TOPEL: That, that's correct, Your Honor. The,
7 the earlier part relates to her -- it's general background and
8 relates to, to some of the financial travails that, that --
9 because --

10 JUDGE CHACHKIN: But you, you said, you said -- you,
11 you made an offer of whether you wanted to put it in --
12 background but you said this is also has a relevant portion
13 so somehow this must have a bearing on the questions of
14 control, or at least you're contending -- you want to, you
15 want to reserve the right to be able to argue that.

16 MR. TOPEL: Well, there were insinuations made
17 during discovery and I'm confident Your Honor's rulings will
18 be --

19 JUDGE CHACHKIN: I'm, I'm not responsible for
20 insinuations made during discovery.

21 MR. TOPEL: That I understand, but, but there were
22 attempts made that because people had certain relationships
23 with TBN that those relationships gave TBN control. And there
24 was -- there is an element of anticipatory response in this
25 testimony because we're trying to discern exactly the things

1 that are troubling the other parties and, and we'll be trying
2 to discern what's troubling Your Honor and the Commission,
3 and that seemed to be something that was, was concerning some
4 of the parties so we addressed it.

5 JUDGE CHACHKIN: Well, I, I don't think it's, it's
6 simply that and I'm not going to get into the reasons why you
7 put in all this material. It's pretty obvious you wanted to
8 demonstrate -- provide what you believe was a favorable
9 impression of the individuals involved in this thing, that was
10 your purpose.

11 MR. TOPEL: Part of our purpose, certainly.

12 JUDGE CHACHKIN: Yes. I don't think it's -- but
13 it's relevant to the question of control. Now, it appears to
14 me it begins to become relevant when you talk about at 28
15 where she starts discussing the purchase of air time.

16 MR. SCHONMAN: Your Honor, might I suggest what the
17 Bureau would, would, would offer as, as relevant information
18 and should remain?

19 JUDGE CHACHKIN: You're saying --

20 MR. SCHONMAN: If we go back to paragraph 20, I
21 would ask that Your Honor retain the sentence, "I graduated
22 from Central High School in three years to go to college
23 early."

24 JUDGE CHACHKIN: Why? What does that have to do
25 with anything?

1 MR. SCHONMAN: Because I think Mrs. Duff's
2 educational background is, is relevant background information.

3 JUDGE CHACHKIN: As to whether or not she was in
4 control of the station or not -- of NMTV? How does that bear
5 on it? I mean, what does the educational level -- have a
6 bearing on whether or not she was in control of NMTV or not?
7 Some of the most successful people are people who have very
8 little education. And in fact, there are now
9 multimillionaires or billionaires on Wall Street and they have
10 very little education. So, the fact that one has more or less
11 education, what does that -- bearing on whether they have
12 control? The decisions --

13 MR. SCHONMAN: I can't argue without having --

14 JUDGE CHACHKIN: Decisions that were made determine
15 who was in control. The fact that a person is college
16 educated or not college educated has no bearing on control and
17 it's only something extraneous which will confuse the issue.

18 MR. SCHONMAN: Very well, Your Honor. Might I
19 suggest then if we're going to begin with paragraph 28 that we
20 strike the first sentence of paragraph 28? And in order to
21 give this paragraph context, there is a reference there to
22 Rev. Bernard. In order to give some context to who Rev.
23 Bernard is, there is a reference in paragraph 25, second
24 sentence, "My family joined a new church called Evangel Temple
25 which was pastored by Rev. Jerry Bernard."

1 JUDGE CHACHKIN: All right. I, I agree with you
2 that it should -- purpose of context we should know who Rev.
3 Bernard was. But aside from the reference to Rev. Bernard,
4 who he is, I'm not going to receive paragraphs 20 to --
5 through 27. Now, beginning with paragraph 28 on, any
6 objection?

7 MR. COHEN: Could I just mark that, Your Honor?

8 JUDGE CHACHKIN: Yes.

9 MR. COHEN: You're -- on 25 you're admitting, "My
10 family joined a new church," that sentence? Is that the
11 sentence, Your Honor, you admitted, "called Evangel Temple"?

12 JUDGE CHACHKIN: I'll permit that, yes.

13 MR. COHEN: That sentence?

14 JUDGE CHACHKIN: That sentence and the following
15 sentence which, which states who the pastor was. Those two
16 sentences.

17 MR. TOPEL: I'm sorry, Your Honor, I didn't get
18 that. Which two sentences?

19 JUDGE CHACHKIN: The first two sentences in
20 paragraph 25. Well, in fact, I only -- my only purpose in, in
21 allowing in the information on paragraph 25 is to identify her
22 knowledge of Rev. Jerry Bernard and who he was. Just solely
23 for that purpose I am allowing those two sentences in. The
24 fact that her family joined a particular church is, is
25 irrelevant. But this is just as a point of context when you

1 consider paragraph 28 which appears to be relevant.

2 MR. TOPEL: Your Honor, for, for context should we
3 leave the first sentence of paragraph 24 in just so we get a
4 time frame?

5 JUDGE CHACHKIN: Well, I -- that's -- here we're
6 talking about 1961, but apparently the time she's talking
7 about in paragraph 28 is -- 1970s I gather. That's what she,
8 that's what she's talking about --

9 MR. TOPEL: That's right.

10 JUDGE CHACHKIN: -- the mid-1970s. So, the fact she
11 moved to Sacramento, California, is, is not relevant. All,
12 all -- let me, let me just make this short. The only portion
13 of paragraph 25 I am receiving is the identification of Rev.
14 Bernard as the pastor of Evangel Temple. That's the only
15 portion of paragraph 25 I'm receiving.

16 MR. COHEN: 26, Your Honor?

17 JUDGE CHACHKIN: 26 I'm not receiving.

18 MR. COHEN: 27?

19 JUDGE CHACHKIN: I'm not receiving. Now we're at
20 paragraph 28. Any objection to 28?

21 MR. COHEN: Your Honor, 28, I have no objection when
22 the witness starts testifying concerning NMTV, but 28 doesn't
23 seem to me to, to deal with that. This is still seems to be
24 background that's very collateral. This is more about, about
25 Rev. Bernard than it is anything else and about his attempting

1 suicide and this and that which are all very worthy efforts
2 and I'm not at all critical of what this lady was doing, but
3 it just seems to me it's not relevant to the control issue

4 MR. TOPEL: Your Honor Well, Your Honor, in
5 paragraph 29 relating to specific time the witness became
6 associated with TBN, she says, "I saw a message on the station
7 seeking volunteers for the telephone counseling lines which
8 was similar to the ministry work I had done in San Diego," and
9 the language in paragraph 28 is what she's referring to.

10 MR. COHEN: Well, I think it's too collateral, Your
11 Honor.

12 MR. TOPEL: It's, it's what she joined TBN to do.

13 JUDGE CHACHKIN: This is very difficult in
14 discerning which portions of paragraph 28 may have some
15 relevance. As I gather, all, all paragraph 28 does apparently
16 is confirm which is not being contested, the fact that
17 ministry work -- she had done similar ministry work at San
18 Diego --

19 MR. TOPEL: Well, Your Honor, if I can --

20 JUDGE CHACHKIN: -- and apparently that's not being
21 contested. So, since it's not being contested we don't need a
22 whole paragraph what she did.

23 MR. TOPEL: We need -- well, first of all, the fact
24 that it's not contested doesn't give a basis for saying what
25 it is unless it's left in the record. I'm trying to find a

1 paragraph which I'm not able to find now. Your Honor, may,
2 may I just have one minute?

3 JUDGE CHACHKIN: Yes.

4 MR. COHEN: Can we go off the record and talk about
5 this, Your Honor? Because I have a suggestion that I think
6 it's better to go off the record.

7 JUDGE CHACHKIN: All right. We'll go off the
8 record.

9 (Whereupon, off the record.)

10 (Whereupon, on the record.)

11 MR. TOPEL: Your Honor, I believe the testimony is
12 tied up in paragraph 65 which talks about Mrs. Duff's judgment
13 as an owner of NMTV to be an TBN affiliate. And she says, "As
14 I have previously discussed, I have experienced firsthand the
15 important role that the church plays in the, in the minority
16 communities as a vehicle to promote interracial harmony."
17 Now, you've already stricken the -- one of the paragraphs that
18 made that point very vividly what she's experienced, but let
19 me go on: "And the role that the church plays to minister to
20 the needs of people in those communities." This reference to
21 her -- the church's role in ministering to people in San Diego
22 is directly tied to her programming decision for TBN. So, I
23 would ask that you leave paragraph 28 in and also reinstate
24 the paragraph that -- where she discusses interracial harmony
25 which is --

1 JUDGE CHACHKIN: I don't propose to do so. As far
2 as I'm concerned, we can take out the words, "As I have
3 previously discussed," and she could state, "I have
4 experienced firsthand the important role the church plays,"
5 and we don't have to have previous discussion, it's not
6 necessary. If someone wants to contest it they can contest
7 it. No one's contending it didn't happen and I don't see any
8 purpose of having this whole preamble what she did.

9 MR. COHEN: So, what's your ruling then, Your Honor?

10 JUDGE CHACHKIN: Well, my ruling is with respect to
11 we're talking about paragraph 28. I'll permit in 28 solely
12 for the purpose of showing her background --

13 MR. COHEN: Not for relevance?

14 JUDGE CHACHKIN: I, I don't see how any of this ties
15 in to control. That's my difficulty. Control is based on the
16 decisions she made. The reasons she made these decisions --
17 if she didn't make these decision then it's irrelevant. And
18 if she made the decision then it's irrelevant what her reasons
19 were for making the decision. What we're addressing, who made
20 the decisions. If somebody questions whether or not -- I
21 mean, if she states she made the decisions and someone
22 questions whether she made the decisions, maybe then she could
23 -- I don't know, I don't know how this background material has
24 any bearing on the decisions she made. I'd just like to get
25 to where we start talking about what she did at, at NMTV and

1 TBN, that's what I'd like to get. That's where I wish we
2 would start instead of 24 pages later, or 30 or 40 pages
3 later. It would simplify the process and maybe we could start
4 getting into something that's relevant.

5 MR. COHEN: So, are we up -- are you up for more
6 objections now, Your Honor?

7 JUDGE CHACHKIN: Yes. I don't see how paragraph 28
8 is relevant. I'm going to reject it. As far as paragraph 29,
9 that speaks for itself, that she did volunteer work with
10 telephone counseling lines. I think there's enough
11 information there in paragraph 29 without all the prior
12 paragraph.

13 MR. COHEN: I have no objection to 29, Your Honor.

14 JUDGE CHACHKIN: All right. 29 will be received.

15 MR. TOPEL: Your Honor, I understood you to say
16 previously that you were also going to receive 28 --

17 JUDGE CHACHKIN: I didn't say --

18 MR. TOPEL: -- as, as background to what's said in
19 29.

20 JUDGE CHACHKIN: Well, I don't, I don't think we
21 need it and I'm not going to receive it. We have enough
22 material -- unnecessary material in this record already as far
23 as I'm concerned. This is just additional. We don't need it.

24 MR. COHEN: Do you want me to go, Your Honor?

25 JUDGE CHACHKIN: Yes.

1 MR. COHEN: Paragraph 30, I object to the sentence
2 on the top of page 23, "I am very serious about complying with
3 FCC requirements." I think that's a self-serving conclusion
4 which is not -- which has no relevance.

5 MR. TOPEL: Excuse me, Your Honor, I got lost.
6 Paragraph 29 is received? Is that --

7 JUDGE CHACHKIN: Paragraph 29 is received.

8 MR. TOPEL: Okay, and then where are we now?

9 MR. COHEN: We're on page 30, Mr. Topel.

10 JUDGE CHACHKIN: Paragraph 30.

11 MR. COHEN: Excuse me, paragraph 30, the first
12 sentence. Should I repeat my --

13 JUDGE CHACHKIN: Your objection is the sentence with
14 --

15 MR. COHEN: "I am very serious about complying with
16 FCC requirements."

17 JUDGE CHACHKIN: "As the primary contract with FCC
18 counsel, I am very serious -- " is that your objection, that
19 sentence?

20 MR. COHEN: Yes, it is.

21 JUDGE CHACHKIN: That sentence is stricken.

22 MR. TOPEL: The whole sentence?

23 JUDGE CHACHKIN: The whole sentence is stricken.

24 Next objection?

25 MR. COHEN: My next objection, Your Honor, is not

1 until paragraph 36.

2 JUDGE CHACHKIN: You have any objection to the prior
3 paragraphs?

4 MR. SCHONMAN: No, sir.

5 JUDGE CHACHKIN: All right. Paragraph 36?

6 MR. COHEN: Your Honor, this is a point that's going
7 to come up many times and so it needs to be addressed now.
8 Page 27, the first sentence -- complete sentence, "For the
9 next several years NMTV was essentially a dormant company, it
10 had no real business to, to conduct," and I think that that's
11 improper. My client is going to argue that NMTV was a company
12 in existence from 1980 and it did indeed conduct business
13 starting in 1980. We have documents we hope to offer to --
14 we, we propose to offer which will show you the evolution of
15 NMTV as a business. It conducted business, it filed
16 applications, it collected officers. And so I think it's
17 conclusory to say NMTV was essentially a dormant company.
18 That's something in dispute and you're going to have to
19 determine that. It's, it's NMTV's argument you should, you
20 should pay no attention to what their practices were until
21 1987 because they didn't own a television station until then,
22 and we dispute that, or my client disputes that. And so I
23 think that it's improper to permit into through the back door
24 what is going to be essentially NMTV's proposed findings and
25 fact and conclusions of law. I object to the term "a dormant

1 company," and, "it had no real business to conduct," until
2 almost six years later.

3 MR. TOPEL: Well, Mr., Mr. Cohen can cross-examine
4 the witness on what she meant by those terms. She has
5 explained it, there is already reference in the testimony to
6 the applications that were filed, the amendments that were
7 filed, the certifications that were filed. She said that
8 during the intervening years "we did meet and, and elect
9 officers, and beyond that we, we did very little," and that's
10 a factual statement that Mr. Cohen can test on examination if
11 he can -- if he wishes to do that.

12 MR. COHEN: Your Honor, I respectfully submit that
13 it's not appropriate on cross-examination to remove
14 conclusions from this testimony. That's not my burden. This
15 is a conclusory statement which is very important in terms of
16 the arguments that you're going to hear and I think it's
17 improper to have a conclusory statement in evidence. That's a
18 conclusion that you're going to draw or not from the findings
19 of fact.

20 JUDGE CHACHKIN: It's her, it's her testimony that
21 NMTV was a dormant company and had no business to conduct. If
22 you have evidence to the contrary you could put it in. I'll
23 overrule your objection.

24 MR. COHEN: Well then would you put it in for her
25 state of mind but as a, not as a fact?

1 JUDGE CHACHKIN: This is her testimony as to what
2 existed. You, you can question her and demonstrate that on
3 cross-examination that there is no basis for her statement
4 here. I'll overrule the objection.

5 MR. COHEN: I, I understand your --

6 JUDGE CHACHKIN: I think it's a factual statement to
7 say the company was dormant --

8 MR. COHEN: Very well, sir.

9 JUDGE CHACHKIN: -- and it had no real business to
10 conduct. I mean, you -- Bureau have any objections?

11 MR. SCHONMAN: None. I think it's a matter that
12 Mrs. Duff can be cross-examined on.

13 JUDGE CHACHKIN: Yes. Next, next objection?

14 MR. COHEN: In the next paragraph, 37, the middle,
15 "Virtually nonexistent," I have the same objection, Your
16 Honor. I won't --

17 JUDGE CHACHKIN: But what does that say?

18 MR. COHEN: -- I won't repeat it.

19 JUDGE CHACHKIN: Well, I'll, I'll, I'll -- I don't
20 know what "virtually nonexistent" means. Either it was in
21 existence or it's nonexistent.

22 MR. COHEN: That's, that's why I'm objecting, Your
23 Honor.

24 JUDGE CHACHKIN: Well, this is objection -- this,
25 this is an ambiguous term, "virtually nonexistent." I'll,

1 I'll strike the words "virtually nonexistent." She's
2 described a condition of the business. We don't need her
3 characterization.

4 MR. COHEN: And then the last, the last phrase on
5 page -- on paragraph 37, "Had very little business of any
6 kind," the same objection.

7 JUDGE CHACHKIN: Well, that's a factual statement on
8 her part that --

9 MR. COHEN: Very well, sir.

10 JUDGE CHACHKIN: Any other -- if the Bureau has any
11 further objections they should indicate so -- we'll move on to
12 the next paragraph. All right.

13 MR. COHEN: Paragraph 39.

14 JUDGE CHACHKIN: Yes?

15 MR. COHEN: This is an important matter, Your Honor.
16 You're going to see this come up through the remainder of the
17 testimony. And this concerns the advice that Mr. May gave
18 Mrs. Duff. And Mr. May who is present in the hearing room,
19 Your Honor, is, is going to be a witness and he has exchanged
20 direct testimony. I will not object -- I think it's fair
21 that, that NMTV be able to say what advice they received from
22 Mr. May and this sentence -- if this, if this is coming in for
23 her state of mind, this is clearly hearsay, it was what --
24 it's what Mr. May told her. If this was coming in -- if this
25 is coming in for her state of mind then I don't have any